U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32502755

Date: AUG. 2, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a Taekwon-Do athlete, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Petitioners in this category may ultimately apply for U.S. permanent residence if they demonstrate "sustained national or international acclaim" and document recognition of their achievements in their fields of expertise. *Id.*

The Director of the Nebraska Service Center denied the petition, concluding that the record did not show the Petitioner met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics as demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The record shows the Petitioner, a Kyrgyzstan native and citizen, is a Taekwon-Do (martial arts) athlete, who started competing in martial arts events in 2010 (at the age of fifteen). The Petitioner asserts that since that time he has accomplished numerous achievements in his field of expertise which have been recognized on both a national and international level. Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The petition was filed on December 9, 2022. Thus, the record must establish that he met the requisite three criteria as of that date. 8 C.F.R. § 103.2(b)(1). The Petitioner claims throughout this proceeding that he satisfies four of these criteria:

- (i), documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor (awards)
- (ii), membership in associations requiring outstanding achievements of their members (membership)
- (iii), published material about the individual in professional or major media (published material)
- (iv), participation as a judge of the work of others in the same or allied field of specification for which classification is sought (judging)

The Director denied the petition, concluding that the Petitioner met only two of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), membership and judging. On appeal, the Petitioner does not assert, nor does the record establish that he met any of the other six criteria beyond those identified above by the Petitioner. When dismissing an appeal, we generally do not address issues that are not raised with specificity on appeal. Therefore, we deem these issues to be waived and will not address these criteria in our decision. Issues or claims that are not raised on appeal are deemed to be "waived." *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). For the reasons discussed below, the Petitioner has not established that he satisfies the initial evidentiary requirements for an individual of extraordinary ability in athletics.

> *Evidence of the person's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)*

The Director denied the petition, but also concluded without further explanation that the Petitioner met the judging criterion. For the following reasons, we withdraw the Director's determination that the Petitioner met this criterion.[1]

The Petitioner initially submitted a certificate, accompanied by an English translation, which recognizes him "for his help in judging" at the 2018 [redacted] championship organized and officiated by the International Taekwon-Do Federation (ITF). The Director issued a request for evidence (RFE) asking for additional evidence about the nature of the Petitioner's judging activities at this event, such as the work that the Petitioner judged, the skill level of the participants, how he was invited to participate in the judging activity, evidence of being selected, and evidence conveying the event(s) where the judging occurred.

In response, the Petitioner provided an additional copy of the initially submitted certificate, and offered the following information that was already included on the certificate itself, noting that the event was held from [redacted] in 2018 in the city of [redacted] in Kyrgyzstan, and that the Petitioner was awarded the certificate for his help in judging during the ITF's [redacted] Championship.

Based on our de novo review, we conclude that the Petitioner's provision of the certificate recognizing him for "his help in judging" at this three-day event, without additional supporting documentation and explanation about the specifics of the judging activities he performed there, is insufficient to demonstrate that he has met the plain language of the judging criterion. Though requested by the Director, the Petitioner has not offered evidence adequate to establish that he served as a judge of the work of others in his field, such as the level of the participants who were competing at the events he "helped" judge, how or whether he was selected to act as an official ITF judge at these events, or the nature of the specific competitive events he judged. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chaw*athe, 25 I&N Dec. at 376. Without more, the record does not offer sufficient evidence to show the judging services the Petitioner provided, if any, while he was *helping* with judging during this event. This criterion has not been met.

> *Evidence of published material about the individual in professional or major trade publications or other major media, relating to their work in the field for which classification is sought. Such evidence must include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)*

To meet this criterion, the published material must be about the Petitioner and related to his specific work in the field for which classification is sought; it must include the title, date, and author of the material and any necessary translation; and the publication must qualify as a professional publication,

[1] We will not disturb the Director's determination that the Petitioner met the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).

major trade publication, or major media publication. 8 C.F.R. § 204.5(h)(3)(iii). Evidence of published material in major media publications about the Petitioner should establish that the circulation (online or in print) or viewership is high compared to other statistics and identify the intended audience. *See generally* 6 *USCIS Policy Manual* F.2(B)(1) (criterion 6), https://www.uscis.gov/policymanual (discussing circulation or viewership).

The Director determined that although the Petitioner submitted an interview article and documentation about his appearance on a TV show, he provided insufficient evidence to establish that the publications occured in professional or major trade publications or other major media, or that they met other aspects of the plain language requirements for this criterion. The Petitioner asserts that in denying the petition, the Director acted capriciously by determining that [he] did not establish this criterion." But other than generally disagreeing with the Director's conclusions about this criterion, the Petitioner has not adequately explained why he believes the Director "acted capriciously." Here, the record shows that the Director considered and discussed the evidence provided, and gave a reasoned explanation regarding why this evidence did not establish the Petitioner's eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner maintains that barakelde.org (B-), a Kyrgzstan website, qualifies as major media. The article, [redacted] was published on B-. As evidence that B- qualifies as major media he submitted a 2011 article published by an organization, Media Policy Institute at media.kg, noting that B- had experienced a "boom" in viewership in 2011 and is "part of the media holding [group] AKIpress [A-]."

To begin with, the 2011 article discussing B-'s viewership statistics predates the publishing of the Petitioner's interview article by a decade. The Petitioner has not provided documentation relevant to B-'s viewship statistics contemporaneous to 2021 when the article was published. Thus, the viewership statistics presented in the 2011 article do not sufficiently illustrate B-'s standing as major media in 2021.

We note that even if this article did provide adequate statistics about B-'s viewership in 2021, the article maintains that "[B-] is the largest newsportal in the country," but it did not provide comparative statistics for other media outlets operating therein to substantiate this assertion. For instance, the article notes that its "review of other sites also indicates a serious surge in interest in 'Kyrgyz" content, but it did not identify the names and viewership statistics of these other media websites, nor did the article address the circulation size and readership aspects of other media formats offering news in the country, such as newspapers and magazines. Absent relevant information about other media outlets operating in the country, the evidence provided falls short in demonstrating that B- is a major media outlet.

On appeal, the Petitioner asserts that B- "is the Kyrgz language website of [A-]. He points to A-'s previously submited 2020 press release in which A- announces that it "has become the leading news agency in the Kyrgyz Republic and one of the largest in Centeral Asia." While A-'s self-reporting press release discusses the countries that A- covers, and states that it "generates 500-600 unique news [items] per day," the press release does not acknowledge that B- is part of its media group nor does it provided a comparative analysis of B-'s viewership performance relative to other media outlets offering news across the Kyrgzstan Republic, or regionally in Central Asia where A- offers news

coverage. Without comparative statistical evidence describing the circulation and viewershop of the media outlets operating in the country relevant to the timeframe in which this article was published, the Director did not meet his burden to establish that B- qualified as major media in 2021.

The Director also noted that the plain language of this criterion requires the identification of the author of a published article about a petitioner, and concluded that since the article simply listed the author as "The Sport," this article did not meet this criterion because the author was not identified. 8 C.F.R. § 204.5(h)(3)(iii). We agree that evidence does not identify the author of this article and does not meet the plain langauge requirements of this criterion for this additional reason.

On appeal, the Petitioner also asserts that the Director erred in determining that "his participation in the morning show of [redacted] on the NTS TV Network [N-]" does not qualify as published material about him. We disagree. As previously discussed, to meet this criterion the published material must be about the Petitioner and related to his specific work in the field for which classification is sought. The record contains a 2023 letter from an individual said to be employed by N- as a "traffic manager." While, the trafffic manager indicates that in 2019 the Petitioner "took part in the live broadcast of the [N-] TV channel program [redacted] as a guest and discussed his achievements with our TV hosts," he does not explain how he came to have knowledge of the Petitioner's participation in this TV show and the content of the discussions that occurred during the broadcast. The Petitioner has not provided transcripts of this broadcast or other evidence to establish the topics covered with the Petitioner during the show. Therefore, the Petitioner has not submitted evidence adequate to subtantiate his assertion that he appeared on this show, and that the show was broadcast to discuss or otherwise showcase the Petitioner's work in the marital arts field.

The Petitioner also provided three pages from N-'s website which include pictures of N-'s building and a discussion about N-'s broadcasting history, but he has not offered sufficient evidence to show this broadcasting organization qualifies as major media. For these reasons, the evidence about the Petitioner's claimed 2019 appearance on TV does not meet the plain language requirements of this criterion.

On appeal, the Petitioner also suggests that we should consider this evidence as "comparable evidence." The regulation at 8 C.F.R. § 204.5(h)(4) addresses comparable evidence and allows a petitioner the opportunity to submit "comparable" evidence to establish their eligibility, if USCIS determines that a criterion does not readily apply to the individual's occupation. *See id.* A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3). *See id.* Here, the Petitioner does not offer evidence or narrative discussing how the standard criteria do not readily apply to his occupation to support his contention that the comparable evidence clause applies in this matter.

This criterion has not been met.

The record does not establish that the Petitioner meets the two evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) cannot change the outcome of the appeal. Therefore, we reserve and will not address this remaining issue. *See INS*

v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for the handful of individuals at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). As contemplated by Congress, the Petitioner must demonstrate the required sustained national or international acclaim, consistent with a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of his field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.